

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL PEMBERTON *et al.*,  
Plaintiffs,  
v.  
NATIONSTAR MORTGAGE LLC,  
Defendant.

Case No.: 14-CV-1024-BAS(WVG)

**SCHEDULING ORDER  
REGULATING DISCOVERY  
AND OTHER PRE-TRIAL  
PROCEEDINGS**

Pursuant to Rule 16.1(d) of the Local Rules, a Case Management Conference was held on October 23, 2018. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, **IT IS HEREBY ORDERED:**

1. Counsel shall refer to the Standing Order for Civil Cases for the Honorable Cynthia Bashant and the Civil Chambers Rules for the Honorable William V. Gallo, both of which are accessible on the Court's website at [www.casd.uscourts.gov](http://www.casd.uscourts.gov).

2. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed by **November 21, 2018**.

3. On or before **June 13, 2019**, all parties shall exchange with all other parties a list of all expert witnesses expected to be called at trial to present evidence under Federal Rule of Evidence 702, 703, or 705. The list shall include the name, address, and phone

number of the expert and a brief statement identifying the subject areas as to which the expert is expected to testify. The list shall also include the normal rates the expert charges for deposition and trial testimony. On or before **June 27, 2019**, any party may supplement its designation in response to any other party's designation so long as the party supplementing its expert designation has not previously retained an expert to testify on that subject.

4. Each expert witness designated by a party shall prepare a written report to be provided to all other parties no later than **July 18, 2019**, containing the information required by Fed. R. Civ. P. 26(a)(2)(B).

5. On or before **August 1, 2019**, any party, through any expert designated, shall in accordance with Fed. R. Civ. P. 26(a)(2)(D)(ii), supplement any of its expert reports regarding evidence intended solely to contradict or rebut evidence on the same subject matter identified in an expert report submitted by another party.

**Except as provided in paragraph 5, below, any party that fails to make these disclosures shall not, absent substantial justification, be permitted to use evidence or testimony not disclosed at any hearing or at the time of trial. In addition, the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

6. If a party has made a disclosure under Rule 26(a), and "learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing," the party must supplement or correct its disclosure or response in a "timely manner," pursuant to Fed. R. Civ. P. 26(e)(1).

7. All discovery pertaining to facts shall be completed on or before **May 23, 2019**. All discovery pertaining to expert witnesses shall be completed on or before **August 15, 2019**.

"Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure must be initiated a sufficient period of time in advance of the cut-off date, so that it may be completed by the cut-off date, taking into account the times for services,

1 notice, and response as set forth in the Federal Rules of Civil Procedure, **and any motions**  
2 **and the resolution of any discovery disputes.** All disputes concerning discovery shall be  
3 brought to the attention of the Magistrate Judge no later than thirty (30) days following the  
4 date upon which the event giving rise to the discovery dispute occurred. Counsel shall  
5 meet and confer pursuant to the requirements of Fed. R. Civ. P. 26 and Local Rule 26.1(a).

6 8. All motions for class certification shall be filed on or before **September 13,**  
7 **2019.**

8 All motions, other than motions to amend or join parties, for class certification, or  
9 motions *in limine*, shall be filed on or before **December 20, 2019.**

10 Any *Daubert* motions shall be filed along with motions for summary judgment  
11 unless no motions for summary judgment will be filed, in which case the parties may file  
12 *Daubert* motions along with motions *in limine*.

13 Motions will not be heard or calendared unless counsel for the moving party has  
14 obtained a motion hearing date from the law clerk of the judge who will hear the motion.  
15 **Be advised that the period of time between the date you request a motion date and**  
16 **the hearing date may be up to sixty (60) days. Please plan accordingly.** Failure of  
17 counsel to timely request a motion date may result in the motion not being heard.

18 Briefs or memoranda in support of or in opposition to any pending motion shall not  
19 exceed twenty-five (25) pages in length without leave of the judge who will hear the  
20 motion. No reply memorandum shall exceed ten (10) pages without such leave of court.

21 9. Pursuant to Local Rule 7.1.f.3.c, **if an opposing party fails to file opposition**  
22 **papers in the time and manner required by Local Rule 7.1.e.2, that failure may**  
23 **constitute a consent to the granting of a motion or other request for ruling by the**  
24 **Court.** Accordingly, all parties are ordered to abide by the terms of Local Rule 7.1.e.2 or  
25 otherwise face the prospect of any pretrial motion being granted as an unopposed motion  
26 pursuant to Local Rule 7.1.f.3.c.

27 10. A Mandatory Settlement Conference shall be conducted on **June 21, 2019,** at  
28 **9:00 a.m.** in the chambers of Magistrate Judge William V. Gallo. Counsel shall submit

1 settlement statements **directly to chambers** no later than **June 10, 2019**. Each party's  
 2 settlement statement shall set forth the party's statement of the case, identify controlling  
 3 legal issues, concisely set out issues of liability and damages, and shall set forth the party's  
 4 settlement position, including the last offer or demand made by that party, and a separate  
 5 statement of the offer or demand the party is prepared to make at the settlement conference.  
 6 **Settlement conference briefs shall not be filed with the Clerk of the Court, but may**  
 7 **be served on opposing counsel at the party's discretion. Settlement conference briefs**  
 8 **shall comply with the undersigned's Chambers Rules.** The parties shall meet and confer  
 9 in good faith prior to the Mandatory Settlement Conference, and verify that they have done  
 10 so in their respective Mandatory Settlement Conference statements, outlining the substance  
 11 of their discussions and negotiations.

12 Pursuant to Federal Rule of Civil Procedure 16 and Local Civil Rule 16.3, all named  
 13 Plaintiffs, named Defendants, claims adjusters for insured defendants, and if a named  
 14 Plaintiff or Defendant is a corporation, partnership, or other entity, a representative of that  
 15 entity, with full and unlimited authority<sup>1</sup> to negotiate and enter into a binding settlement,  
 16 as well as the principal attorney(s) responsible for the litigation, must be present and must  
 17 be prepared to discuss in good faith, the facts of the case, the law that governs the legal  
 18 issues in the case, and to resolve the case at the Settlement Conference. Sanctions may  
 19 issue against a party and/or attorney who does not proceed as noted above. Retained  
 20 outside corporate counsel shall not appear on behalf of a corporation as the party who has  
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 23 <sup>1</sup> "Full authority to settle" means that the individuals at the settlement conference must be  
 24 authorized to fully explore settlement options and to agree at that time to any settlement  
 25 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d  
 26 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to  
 27 change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481,  
 28 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement  
 authority to attend the conference includes that the person's view of the case may be altered  
 during the face to face conference. *Id.* at 486. A limited or a sum certain of authority is  
 not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590 (8th Cir. 2001).

the authority to negotiate and enter into a settlement. For good cause, and on ex parte application at least one week before the scheduled settlement conference, Magistrate Judge Gallo may excuse a party or representative from personal attendance provided such party or parties will be available by telephone during the conference. Failure to attend the conference or participate in good faith or obtain proper excuse will be considered grounds for sanctions. Counsel seeking to reschedule a Settlement Conference must first confer with opposing counsel. The Court will consider formal, written *ex parte* requests to continue a Settlement Conference when extraordinary circumstances exist that make a continuance appropriate. In and of itself, having to travel a long distance to appear at the Settlement Conference is not an extraordinary circumstance.

11. The parties must comply with the pretrial disclosure requirements of Fed. R. Civ. P. 26(a)(3) no later than **March 9, 2020**. **Please be advised that failure to comply with this section or any other discovery order of the Court may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on the introduction of experts or other designated matters in evidence.**

12. In jury trial cases before the Honorable Cynthia Bashant, neither party is required to file Memoranda of Contentions of Fact and Law pursuant to Civil Local Rule 16.1.f.2.

13. Counsel shall confer and take the action required by Local Rule 16.1.f.4.a on or before **March 16, 2020**.

14. Counsel for the Plaintiff(s) must provide opposing counsel with the proposed pretrial order for review and approval and take any other action required by Local Rule 16.1.f.6.a on or before **March 23, 2020**.

15. The proposed pretrial order shall be lodged with the district judge's chambers on or before **March 30, 2020**, and shall be in the form prescribed in Local Rule 16.1.f.6.

16. The final Pretrial Conference is scheduled on the calendar of the **Honorable Cynthia Bashant** for Monday, **April 13, 2020** at **11:00 am**.

17. All motions *in limine* are due no later than **April 27, 2020**.

1 18. All responses to the motions *in limine* are due no later than **May 11, 2020**.

2 19. The parties shall submit the following no later than **May 11, 2020**: (1) joint  
3 proposed jury instructions; (2) proposed verdict form; (3) *voir dire* questions; and (4)  
4 statement of the case.

5 20. The parties shall exchange final exhibit and witness lists no later than **June 2,**  
6 **2020**.

7 21. A hearing for motions *in limine* is scheduled for Monday, **June 1, 2020** at  
8 **10:30 am**.

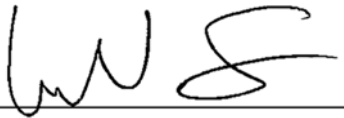
9 22. The trial in this matter shall commence on Tuesday, **June 16, 2020** at **9:00**  
10 **am**.

11 23. The dates and times set forth herein will not be modified except for good cause  
12 shown.

13 24. Plaintiff's counsel shall serve a copy of this order on all parties that enter this  
14 case hereafter.

15 **IT IS SO ORDERED.**

16 DATED: October 24, 2018

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18   
19 Hon. William V. Gallo  
20 United States Magistrate Judge  
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